

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

|                           |   |                  |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | ) |                  |
|                           | ) |                  |
| Plaintiff,                | ) |                  |
|                           | ) |                  |
| v.                        | ) | No.: 3:03-CR-29  |
|                           | ) | (VARLAN/SHIRLEY) |
| MAURICE EDWARD HUGHLEY,   | ) |                  |
|                           | ) |                  |
| Defendant.                | ) |                  |

**MEMORANDUM AND ORDER**

This matter is before the Court on the following objections and other filings, some of which are titled as a motion or notice to appeal, filed by the *pro se* defendant<sup>1</sup> relating to various Report and Recommendations issued by Magistrate Judge C. Clifford Shirley, Jr.:

- (1) “Motion to Appeal Recommendation and Report of Magistrate Shirley, to United States District Court Judge Thomas Phillips” [Doc. 216], which relates to Report and Recommendation [Doc. 186];
- (2) “Affidavit in Support of Objection in Paragraph D” [Doc. 217], which relates to Report and Recommendation [Doc. 186];
- (3) “Objection to Magistrate Judge Shirley’s Report and Recommendation and Appeal to District Court Judge Thomas Phillips and Exhibits” [Doc. 218], which relates to Report and Recommendation [Doc. 186];

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<sup>1</sup> Because of the numerous grammatical and spelling errors contained in the pleadings filed by defendant, the Court will not indicate each and every mistake with the notation “[sic].”

- (4) “Notice to Appeal and Objection to Judge Phillips Deny of Dismissal Indictments in Failure for Government to Product Grand Jury Transcripts & Grand Jury Concurrence Forms by Magistrative Shirley” [Doc. 235], which relates to Report and Recommendation [Doc. 202]; and
- (5) “Motion to Appeal Magistrative Judge’s Report and Recommendation Deny to Suppress [Docket #206], Evidence to United States District Judges” [Doc. 242],<sup>2</sup> which relates to Report and Recommendation [Doc. 225].

At the outset, the Court notes that it need not provide *de novo* review where objections to Report and Recommendations are frivolous, conclusive, or general. *Mira v. Marshall*, 806 F.2d 636, 637 (6<sup>th</sup> Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987).

As required by 28 U.S.C. § 636(b)(1), the Court has undertaken a *de novo* review of the Report and Recommendation [Doc. 186], which is the subject of defendant’s objections contained in documents 216, 217, and 218. In doing so, the Court has carefully reviewed the objections, the briefs, and the entire record. As a result, the Court concludes that Magistrate Judge Shirley has thoroughly and correctly analyzed the facts and legal issues at issue presented by defendant’s motions and other filings requesting dismissal of the indictment [*see* Docs. 32, 33, 39, 92, 97, 98, 100, 101, 103, 105, 136, 148]. Defendant’s objections [Docs. 216, 217, 218] are hereby

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<sup>2</sup> The Court questions the timeliness of this objection [Doc. 242] filed on March 23, 2005 to the Report and Recommendation [Doc. 225] filed on March 2, 2005. According to the Court’s calculations allowing for ten days to object within receipt of the report and three days for service, defendant filed his objection two days after the due date of March 21, 2005. *See* Fed. R. Civ. P. 72(b), Fed. R. Crim. P. 45. Failure to file objections within the specified time waives the right to appeal the magistrate’s report to the district court. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). Nevertheless, the Court *sua sponte* will review this matter *de novo*.

**OVERRULED**, the Court **ACCEPTS IN WHOLE** the Report and Recommendation [Doc. 186] of Magistrate Judge Shirley, and defendant's motions and other filings [Docs. 32, 33, 39, 92, 97, 98, 100, 101, 103, 105, 136, 148] are hereby **DENIED**.

As required by 28 U.S.C. § 636(b)(1), the Court has undertaken a *de novo* review of the Report and Recommendation [Doc. 202], which is the subject of defendant's objection contained document 235. In doing so, the Court has carefully reviewed the objection, the briefs, and the entire record. As a result, the Court concludes that Magistrate Judge Shirley has thoroughly and correctly analyzed the facts and legal issues at issue presented by defendant's motion to dismiss the indictment [*see* Doc. 194]. Defendant's objection [Doc. 235] is hereby **OVERRULED**, the Court **ACCEPTS IN WHOLE** the Report and Recommendation [Doc. 202] of Magistrate Judge Shirley, and defendant's motion to dismiss the indictment [Doc. 194] is hereby **DENIED**.

As required by 28 U.S.C. § 636(b)(1), the Court has undertaken a *de novo* review of the Report and Recommendation [Doc. 225], which is the subject of defendant's objection contained document 242. In doing so, the Court has carefully reviewed the objection, the briefs, and the entire record. As a result, the Court concludes that Magistrate Judge Shirley has thoroughly and correctly analyzed the facts and legal issues at issue presented by defendant's motion to suppress [*see* Doc. 206]. Defendant's objection [Doc. 242] is hereby **OVERRULED**, the Court **ACCEPTS IN WHOLE** the Report and Recommendation [Doc. 225] of Magistrate Judge Shirley, and defendant's motion to suppress [Doc. 206] is hereby **DENIED**.

Finally, there being no timely objection by defendant, *see* 28 U.S.C. § 636(b)(1), and the Court being in complete agreement with Magistrate Judge Shirley, the Report and Recommendation

[Doc. 258] is hereby **ACCEPTED IN WHOLE** whereby defendant's motion to dismiss the indictment for a double jeopardy violation [Doc. 213] is hereby **DENIED**.

### **Conclusion**

For the reasons stated herein, the Court concludes that:

- (1) defendant's objections [Docs. 216, 217, 218] are hereby **OVERRULED**, the Report and Recommendation [Doc. 186] is hereby **ACCEPTED IN WHOLE**, and defendant's motions and other filings [Docs. 32, 33, 39, 92, 97, 98, 100, 101, 103, 105, 136, 148] are hereby **DENIED**;
- (2) defendant's objection [Doc. 235] is hereby **OVERRULED**, the Report and Recommendation [Doc. 202] is hereby **ACCEPTED IN WHOLE**, and defendant's motion to dismiss [Doc. 194] is hereby **DENIED**;
- (3) defendant's objection [Doc. 242] is hereby **OVERRULED**, the Report and Recommendation [Doc. 225] is hereby **ACCEPTED IN WHOLE**, and defendant's motion to suppress [Doc. 206] is hereby **DENIED**; and
- (4) the Report and Recommendation [Doc. 258] is hereby **ACCEPTED IN WHOLE** and defendant's motion to dismiss [Doc. 213] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE